

1 KEVIN W. ROBERTS
2 CHAD FREEBOURN
3 ROBERTS | FREEBOURN, PLLC
4 313 W. Riverside Ave.
5 Spokane, WA 92201
6 Telephone: (509) 381-5262
7 Facsimile: (509) 473-9026
8 Attorneys for Plaintiff

9
10
11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF WASHINGTON

13 CHRISTIAN COX, a married man, and
14 PACIFIC COAST FIBER FUELS,
15 LLC, a Washington limited liability
16 company; and JOSEPH A. MAYO IV,
17 a married man,

18 Plaintiff,

19 VS.

20 ALLIANT INSURANCE SERVICES,
21 INC., d/b/a MOLONEY + O'NEILL, a
22 Delaware corporation; DAN ROMAIN
23 and JANE DOE ROMAIN, a marital
24 community; FARMIN ROTHROCK &
25 PARROTT, INC., a Washington
corporation; and KELLY EGAN and
JANE DOE EGAN, a marital
community,

Defendants.

Case No.: 2:16-cv-00362-SAB

PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO STAY LITIGATION

Date: December 15, 2016

Time: 1:30pm

ORAL Argument REQUESTED

I. INTRODUCTION

Plaintiffs Christian Cox, Pacific Coast Fiber Fuels, LLC, and Joseph Mayo IV, through their attorneys of record, Roberts Freebourn, oppose Defendants'

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO STAY LITIGATION- 1

Motion to Stay this Litigation. Defendants' hope that their frivolous Motion to
1 Disqualify Attorney Kevin Roberts will somehow succeed does not justify
2 bringing this litigation to a halt. Defendants present no factual or legal basis to
3 delay the just, speedy, and inexpensive resolution of this litigation, and their
4 Motion to Stay should be denied.
5

Defendants' Motion to Stay is based on their overly optimistic assumption
7 that they will prevail on their Motion to Disqualify Roberts. See ECF 14.
8 Specifically, Defendants argue without support that they "brought (their) motion to
9 disqualify Plaintiffs' counsel based on Attorney Roberts' prior representation of
10 Moloney + O'Neill in matters directly related to the allegations asserted against
11 Defendant Alliant/Moloney + O'Neill." This is an untrue statement: Roberts and
12 Dunn & Black represented Christian Cox and Moloney, O'Neill, Corkery & Jones,
13 Inc. ("MOCJ") in adversarial negotiations against Defendant Alliant Insurance
14 Services, Inc.. Defendants' mischaracterization of Roberts' and Dunn & Black's
15 previous representation does not provide a basis for an order staying this litigation.
16

II. ARGUMENT

A. A Stay of Proceedings is not Warranted Under Rule 1 of the Federal 22 Rules of Civil Procedure.

Defendants' base their Motion to Stay on Fed. R. Civ. Pro. 1 which directs
23 the Court to administer Rules of Civil Procedures "to secure the just, speedy, and
24

1 inexpensive determination of every action and proceeding.” Defendants fail to
2 provide any evidence that delaying this action would secure the just, speedy, and
3 inexpensive determination of this action. Rather, Defendants’ motion does the
4 exact opposite: it asks the Court to bring this litigation to a halt based solely on
5 their hoping and wishing that their Motion to Disqualify will be successful. Thus
6 Fed. R. Civ. P. 1 does not support a stay of these proceedings.

8 **B. Defendants Failed To Meet Their Burden To Make Out A Clear Case of**
9 **Hardship That would Result From Moving Forward.**

10 When considering a motion to stay, the Court should weigh competing
11 interests and maintain an even balance. Landis v. N. Am. Co., 299 U.S. 248, 255
12 (1936), *citing* Kansas City Southern R. Co. v. United States, 282 U.S. 760, 763
13 (1931); Enelow v. New York Life Ins. Co., 293 U.S. 379, 382 (1935). The party
14 moving for a stay “*must make out a clear case of hardship or inequity in being*
15 *required to go forward, if there is even a fair possibility that the stay for which he*
16 *prays will work damage to someone else.*” Landis, 299 U.S. at 255. The burden is
17 upon the moving party to show good cause to issue a stay by demonstrating harm
18 or prejudice that will result from the discovery. Rivera v. NIBCO, Inc., 364 F.3d
19 1057, 1063 (9th Cir.2004).

20 Defendants have failed to make out a clear case of hardship or inequity that
21 would result from moving forward with this litigation under the timelines specified
22 in the Federal Rules of Civil Procedure. Rather, they make vague, unsupported

1 claims of efficiency and speculative costs. See ECF 14, p. 5. These vague claims
2 do not justify a stay of proceedings, and their motion should be denied.

3 Defendants cite three District Court opinions from other districts, two of
4 which are not reported. See ECF 14, p. 5. These cases are factually dissimilar to
5 the facts present in this action. For example, in Finn v. Harbor Metal Treating Inc.,
6 the stay was granted after the attorney was disqualified. The decision to issue a
7 stay is based on the specific facts of the case. See Landis, 299 U.S. at 255.
8 Defendants have failed to meet their burden to show good cause to issue an order
9 staying these proceedings, and their Motion should be denied.
10
11

12 **C. Plaintiffs Will Be Prejudiced If These Proceedings Are Halted.**

13 Alliant wrongfully terminated Plaintiff Cox's employment, yet Alliant is
14 also alleging that Plaintiff Cox is bound by restrictive covenants that are
15 preventing Cox from pursuing his livelihood as an insurance agent. **Dec. of**
16 **Freebourn, Ex. A.** Cox has filed for a Declaratory ruling from the Court that
17 those restrictive covenants are void. See ECF 22. Cox needs to commence
18 discovery as soon as possible to prevail on his Declaratory action. A stay of
19 proceedings would prejudice him in that it further delays his ability to earn a living
20 as an insurance agent.
21
22

1

III. CONCLUSION

2 Defendants have failed to meet their burden to demonstrate good cause to
3 stay the proceedings in this action and to deprive Plaintiffs of a just, speedy, and
4 inexpensive determination of this action. Plaintiffs therefore request that the Court
5 deny Defendants' Motion to Stay.

6

7 We do not oppose a stay related to Defendants filing Answers or CR 12
8 Motions. However, we request that the procedural steps for discovery not be
9 delayed. Accordingly, we request that the Defendants be required to participate in
10 a FRCP 26 conference and that the scheduling conference be held to ensure that
11 discovery is not delayed.

12

13

14

15 DATED this 16th day of November, 2016.

16 ROBERTS | FREEBOURN, PLLC

17

18

19 /s/ KEVIN W. ROBERTS _____

20 Kevin W. Roberts, WSBA #29473

21 Chad Freebourn, WSBA #35624

22 Attorneys for Plaintiff

23 313 W. Riverside Ave.

24 Spokane, WA 99201

Telephone: (509) 381-5262

Fax: (509) 473-9026

Email: kevin@robertsfreebourn.com

chad@robertsfreebourn.com

1
2 CERTIFICATE OF SERVICE
3
4

5 I HEREBY CERTIFY that on the 16th day of November, 2016, I
6 electronically filed the foregoing document with the Clerk of the Court using the
7 CM/ECF system. The CM/ECF system will send notification of such filings to the
8 following:

9 Robert A. Dunn
10 bdunn@dunnandblack.com

11 Richard Wetmore
12 rwetmore@dunnandblack.com

13 Alexandria T. Drake
14 adrake@dunnandblack.com

15 Scott A. Meyers
16 Scott.meyers@akerman.com

17 Kasey F. Dunlap
18 Kasey.dunlap@akerman.com

19 Julian Dayal
20 Julian.dayal@akerman

21 ROBERTS | FREEBOURN, PLLC

22 _____
23 /s/ KEVIN W. ROBERTS
24 Kevin W. Roberts, WSBA #29473
25 Chad Freebourn, WSBA #35624
Atorneys for Plaintiff
313 W. Riverside Ave.
Spokane, WA 99201
Telephone: (509) 381-5262
Fax: (509) 473-9026
Email: kevin@robertsfreebourn.com
chad@robertsfreebourn.com